



# Committee on Professional Ethics

Opinion #414 - 10/1/75 (78-75) Topic: Division of fees

Digest: Lawyers may agree in advance on a division of fees based on shared responsibility and services.

Code: EC 2-22;  
DR 2-107(A)

## QUESTION

May attorneys who share services and responsibility for a legal matter but are not partners or associates agree in advance on a particular division of fees?

## OPINION

The guidelines for division of fees between lawyers are stated in EC 2-22 and DR 2-107(A), which read:

EC 2-22 provides:

"Without the consent of his client, a lawyer should not associate in a particular matter another lawyer outside his firm. A fee may properly be divided between lawyers properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer and if the total fee is reasonable".

DR 2-107(A) provides:

"(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

"(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

"(2) The division is made in proportion to the services performed and responsibility assumed by each.

"(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client."

Decisions under the Code and former Canons concerning the division of fees between lawyers usually involved the question of whether a forwarding attorney is entitled to a percentage of the total fee for legal services rendered. In the abstract the answer is clear: (1) the fee to the forwarding attorney must be based on the services

performed and the responsibility assumed by the forwarding attorney; (2) the client must consent to the employment of both attorneys; and (3) the total fee must not exceed reasonable compensation for the services rendered. "It was obviously the purpose of [former] Canon 34 to condemn this [finders' fees], and such purpose should not be frustrated by construing the necessity of 'responsibility' as being satisfied by the bare recommendation." Drinker, Legal Ethics 186 (1953); see also ABA 153 (1936); ABA 204 (1940); ABA 265 (1945).

As to whether the agreement concerning the division of fees is proper if made in advance, ABA 204 (1940) stated, in pertinent part:

"...it is obviously desirable that lawyers should determine in advance whether a joint fee is to be charged and divided, or whether each lawyer is to charge a separate fee for his service."

And Drinker commented, at page 187:

"When a claim is forwarded to another lawyer, the candor and fairness required under [former] Canon 22 in dealings between lawyers, make it incumbent on one expecting a share of the associate's fee to advise him of this at the outset, the division between them on the basis thereof being agreed on in advance."

When the lawyers agree in advance with the client's consent that the forwarding attorney will receive, for example, 10% of the fee and the forwarder 90%, a question may later arise as to the division of the fee if it subsequently turns out that the forwarder has performed no services and assumed no responsibility other than selecting the correspondent attorney. As recognized by ABA Inf. 936 (1936), "Canon 34 would be involved, irrespective of the 'agreement', if the division of services and responsibility between you did not warrant the ... division of the fee, or if the cooperation between you and the forwarding attorney was not more than the referral."

In the event it develops upon the completion of a matter that the services performed and the responsibility assumed by the forwarding attorney and the forwarder are grossly disproportionate to the division of fees agreed upon at the outset, there should be a revision of the respective shares in the fee in proportion to the services performed and responsibility assumed by each. If the lawyer cannot agree on a revised division of the fees, a question of law, not ethics, is presented.

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